Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
WASHOE COUNTY TV TAX DISTRICT	)	Facility ID Nos.: 71061, 71060, 59145
	)	NAL/Acct. No.: 202341420009
Licensee of Station K24IB-D, Verdi/Mogul, NV;	)	FRN: 0015121759
K27OD-D, Verdi/Mogul, NV; and K33ER-D,	)	LMS File Nos. 200951, 201084, 201085
Verdi/Mogul, NV	)	
	)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 22, 2023 **Released: March 22, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the applications (Applications)[1] of Washoe County TV Tax District (Licensee), for renewal of the licenses for K24IB-D, Verdi/Mogul, Nevada; K27OD-D, Verdi/Mogul, Nevada;[2] and K33ER-D, Verdi/Mogul, Nevada (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)[3] by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand five hundred dollars ($4,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[4] The applications for renewal of the Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.[5] However, the Licensee did not file the Applications until September 27 and 28, 2022. The Licensee did not provide an explanation for the late filings.

[1] Application of Washoe County TV Tax District for Renewal of License, LMS File No. 200951 (filed. Sep. 27, 2022), Applications of Washoe County TV Tax District for Renewal of License, LMS File Nos. 201084, 201085 (filed Sep. 27, 2022).

[2] At the time of filing, K27OD-D was assigned the call sign K51DJ-D.

[3] 47 CFR § 73.3539(a).

[4] *Id*.

[5] *See* 47 CFR §§ 73.1020, 73.3539(a); *See Media Bureau Announces Procedures For 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (2020).

III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $4,500. In this case, the Licensee failed to file the Applications on or before June 1, 2022, as required by section 73.3539(a) of the Rules.[6] The Applications were not received until September 27 and 28, 2022, over three months late.

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[7] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[8] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,[9] and the Commission has so interpreted the term in the section 503(b) context.[10] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[11]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[12] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[13]

6. In this case, the Licensee failed to timely file a license renewal application for three (3) stations, as required by section 73.3539(a) of the Rules.[14] The Licensee did not provide an explanation for the late filings. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,[15] we will reduce the forfeiture from the base amount to $1,500 per station for the failure to file a timely renewal application, because, as digital television translators, the Stations are providing a secondary service.[16] Furthermore, as translators the Stations are not originating

[6] 47 CFR § 73.3539(a).

[7] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[8] 47 U.S.C. § 312(f)(1).

[9] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[10] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

[11] 47 U.S.C. § 312(f)(2).

[12] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[13] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[14] 47 CFR § 73.3539(a).

[15] *Supra* note 13.

[16] *See, e.g., FCR Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1383 (MB 2021); *Iglesia Sinai Pentecostes, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1513 (MB 2021); *Gerard Media LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 1436 (MB 2021) (all reducing fine for a late renewal application to $1,500 because the stations "provid[e] a secondary service."). *See also Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report (continued….)

programing, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Applications include three (3) stations the total proposed forfeiture amount is $4,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[17] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[18] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[19]

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules[20] does not constitute a "serious violation" warranting designation of the Applications for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[21] Further, based on our review of the Applications, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Applications.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[22] and sections 1.80 and 0.283(d) of the Commission's rules,[23] that Washoe County TV Tax District, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand five hundred dollars ($4,500)** for its apparent willful violation of section 73.3539(a) of the Commission's rules.[24]

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,[25] within thirty (30) days of the release date of this *NAL* Washoe County TV Tax District **SHALL**

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and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations…. Stations in the low power television service are authorized with 'secondary' frequency use status.").

[17] 47 U.S.C. § 309(k).

[18] 47 U.S.C. § 309(k)(1).

[19] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[20] 47 CFR § 73.3539(a).

[21] For example, we do not find here that the Licensee's operation of the Stations "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[22] 47 U.S.C. § 503(b).

[23] 47 CFR §§ 1.80 and 0.283.

[24] 47 CFR § 73.3539(a).

[25] 47 CFR § 1.80,

PAY the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[26] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[27]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[28] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[29] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

[26] Payments made using CORES do not require the submission of an FCC Form 159.

[27] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

[28] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

[29] *See* 47 CFR § 1.1914.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[30] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[31]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.[32]

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Washoe County TV Tax District, P.O. Box 221, Verdi, NV 89439; and by electronic mail to verditvdistrict@gmail.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[30] 47 CFR §§ 1.16 and 1.80(g)(3).

[31] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

[32] 47 U.S.C. § 503(b)(2)(E). *See, e.g., Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).